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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ADRIAN RISKIN

Petitioner,

vs.

LARCHMONT VILLAGE PROPERTY
OWNERS ASSOCIATION,

Respondent.

) Case No.: BS172934

) **MEMORANDUM OF POINTS OF**
) **AUTHORITIES IN SUPPORT OF**
) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE UNDER THE CALIFORNIA**
) **PUBLIC RECORDS ACT**

) [Gov't Code § 6250, *et seq.* Civ. Proc. Code §
) 1085, *et seq.*]

) **DATE: May 16, 2019**

) **TIME: 1:30 P.M.**

) **DEPT: 82**

) **JUDGE: Hon. Mary H. Strobel**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL SUMMARY 1

 A. The BID Failed to Produce Responsive Records Pre-Litigation 1

 B. Petitioner Initiates Litigation; the BID Fails to File Responsive Pleading 3

 C. The Bid Produces a Portion of Responsive Documents in Response to Litigation 4

III. LEGAL ARGUMENT 6

 A. Respondent Failed to Submit a Responsive Pleading and all Facts Petitioner Alleges
 should be Deemed Uncontroverted and True 6

 B. Litigation was Required because Respondent Unlawfully Withheld Records in Response
 to Petitioner's CPRA Request 6

 1. General Principles of the CPRA 6

 2. Petitioner's Requests Sought Disclosable Records and the BID has a Duty to
 Disclose. 8

 3. The BID Failed its Duties Under the CPRA 9

 C. Respondent's Post-Litigation Production is Incomplete and the Court should Order
 Further Production 10

 D. Petitioner is Entitled to a Mandatory Award of Attorney's Fees 12

IV. CONCLUSION 13

TABLE OF AUTHORITIES

Cases

<i>Bank of America, N.A. v. Superior Court</i> (2013) 212 Cal.App.4th 1076	- 6 -
<i>City of San Jose v. Superior Court</i> (2017) 2.Cal.5th 608	- 9 -, - 10 -
<i>Community Youth Athletic Center v. City of National City</i> (2013) 220 Cal.App.4th 1385 ..	- 8 -, - 13 -
<i>County of Los Angeles v. Superior Court</i> (2012) 211 Cal.App.4th 57	- 7 -
<i>Filarsky v. Superior Court</i> (2002) 28 Cal.4th 419.....	- 8 -, - 13 -
<i>Haynie v. Superior Court</i> (2001) 26 Cal. 4th 1061.....	- 7 -
<i>Sacramento Cnty Employees' Retirement System v. Superior Court</i> (2013) 195 Cal.App.4th 440	- 7 -
<i>Sukumar v. City of San Diego</i> (2017) 14 Cal.App.5th 451	- 13 -
<i>Titmas v. Superior Court</i> (2001) 87 Cal.App.4th 738	- 6 -

Statutes

Cal. Code of Civ. Proc. § 1088	- 6 -
Cal. Code of Civ. Proc. § 1094	- 6 -
Cal. Gov. Code § 6250, <i>et seq</i>	- 6 -
Cal. Gov. Code § 6253.1	- 7 -, - 9 -
Cal. Gov. Code § 6253(a)	- 7 -
Cal. Gov. Code § 6253(b)	- 7 -, - 9 -
Cal. Gov. Code § 6253(c)	- 2 -, - 7 -, - 9 -
Cal. Gov. Code § 6254.5	- 9 -
Cal. Gov. Code § 6255	- 7 -
Cal. Gov. Code § 6258	- 7 -
Cal. Gov. Code § 6259(b)	- 7 -
Cal. Gov. Code § 6259(d)	- 8 -, - 12 -
Cal. Gov. Code § 54954(a)	- 9 -
California Streets & Highway Code §§ 36600	- 1 -
California Streets & Highways Code § 36612	- 2 -
California Streets and Highway Code § 36612	- 7 -

1 **I. INTRODUCTION**

2 This is an action to enforce the California Public Record Act ("CPRA") against the Larchmont
3 Village Property Owners Association, a.k.a. the Larchmont Village Business Improvement District
4 ("the BID" or "Respondent"). Petitioner requested easy-to-provide public records concerning
5 fundamental duties and operations of the BID, including communications to the City of Los
6 Angeles, agendas and minutes from Board Meetings, contracts with BID service providers, and
7 emails concerning BID operations. The BID ignored Petitioner's requests and failed to provide any
8 records in response for nearly a year, necessitating this lawsuit. In response to Petitioner's suit, the
9 BID provided some responsive records, but it is clear from the production that the BID did not
10 conduct a complete search for records. For example, certain responsive emails Petitioner obtained in
11 response to a CPRA request to the Los Angeles City Clerk were not provided by the BID. The BID
12 refuses to conduct a full search for records, failed to file a responsive pleading in this matter, failed
13 to timely respond to Petitioner's discovery, and has ceased responding to Petitioner's attempts to
14 resolve this matter via settlement. In so doing, the BID continues to shirk its duty under the CPRA
15 to operate transparently. Petitioner asks this Court for a writ of mandate which orders the BID to 1)
16 conduct an adequate search for responsive records, and 2) produce all responsive records.
17 Additionally, the Court should declare that Petitioner is the prevailing party entitled to an award of
18 costs and attorney's fees.

19 **II. FACTUAL SUMMARY**

20 **A. The BID Failed to Produce Responsive Records Pre-Litigation.**

21 This litigation concerns three separate CPRA requests Petitioner submitted to the BID.
22 Petitioner submitted the requests on April 16, 2017, April 17, 2017, and May 2, 2017. (Declaration of
23 Adrian Riskin, hereafter "Riskin Decl.", ¶ 2; Ex. A.) The BID failed to produce even a single record
24 in response to the requests prior to Petitioner's litigation, initiated eleven months after submitting
25 the first request. (Riskin Decl. ¶ 5.)

26 Respondent is a property owners' association pursuant to the Property and Business
27 Improvement District Law of 1994, California Streets & Highway Code §§ 36600, *et seq.*

1 Respondent contracts with the City of Los Angeles and other entities to manage the Larchmont
2 Village Business Improvement District. (Petitioner's Request for Judicial Notice, hereafter "RJN",
3 Ex. A.) Respondent is subject to the CPRA both as a matter of state law and under the terms of its
4 contract with the City of Los Angeles. California Streets & Highways Code § 36612; (RJN, Ex. A.)
5 Petitioner is an open records activist who uses open government laws to investigate and understand
6 the activities of BIDs, Los Angeles City government, and the relationship between the two. (Riskin
7 Decl. ¶ 1.) He publishes his findings through blogging and community events. (*Id.*) Petitioner's
8 research was recently featured as part of an exhibit at the Los Angeles Poverty Department Museum
9 and documentary filmmakers have used records Petitioner uncovered to inform their ongoing
10 production of a film on the Greater West Hollywood Food Coalition and the Hollywood Media
11 District BID. (*Id.*)

12 The April 16, 2017, request ("Request 1") sought three categories of records: (1) emails
13 between anyone at the BID and anyone at the domains "lacity.org" or "lapd.online" from between
14 January 1, 2016, and March 31, 2017; (2) copies of the minutes of BID board meetings which took
15 place on October 13, 2014, October 15, 2015, and October 12, 2016, as the BID is required to
16 maintain by California Corporations Code § 1500; and (3) contracts between the BID and any
17 consultants it used during its most recent renewal process. (Riskin Decl. Ex. A.) After the BID
18 failed to respond within ten days as directed by Cal. Gov. Code § 6253(c), Petitioner sent a follow-
19 up email to the BID on May 2, 2017. (Riskin Decl. ¶ 3, Ex. B.) After the BID's continued silence,
20 Petitioner sent a second follow-up on May 11, 2017. (*Id.*) On February 17, 2018, having received no
21 response for ten months, Petitioner sent a final follow-up message. (*Id.*) The BID did not respond.
22 (Riskin Decl. ¶ 4.) As evidence submitted with the Verified Petition for Writ of Mandate
23 ("Petition") shows, documents obtained from the Los Angeles City Clerk via the CPRA confirm
24 that responsive records exist which were not provided. (von Herrmann Decl. ¶ 4, Ex. C.)

25 The April 17, 2017, request ("Request 2") sought two categories of records: (1) agendas for
26 all BID board meetings from January 1, 2014, through "the present"; and (2) all emails between
27 anyone at the BID—staff or Board member—from October 2016 that relate to the October 2016 Board
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1 meeting and, if those emails were very few, all emails related to the operation of the BID from
2 October 2016. (Riskin Decl. Ex. A.) After the BID failed to respond within 10 days, Petitioner sent
3 a follow-up email to the BID on April 28, 2017. (Riskin Decl. ¶ 3, Ex. B.) After receiving no
4 response from the BID, Petitioner sent a second follow-up on May 11, 2017. (*Id.*) The BID
5 responded on May 16, 2017, but failed to provide records, confirm the existence of records, or
6 provide a determination of disclosability. Rather, the BID merely stated that it was reviewing the
7 request and expected to respond further within 14 days. (Riskin Decl. ¶ 4, Ex. C.) The BID did not
8 respond further within 14 days. (*Id.*) Hearing nothing from the BID regarding the request, Petitioner
9 sent a final follow-up regarding Request 2 on February 17, 2018. (Riskin Decl. ¶ 3, Ex. B.) The BID
10 did not respond. (Riskin Decl. ¶ 4.)

11 The May 2, 2017, request sought a single category of records: electronic copies of all
12 material distributed at the BID's May 2, 2017, board meeting. (Riskin Decl. ¶ 2, Ex. A.) After the
13 BID failed to respond within 10 days, Petitioner sent a follow-up email to the BID on May 30,
14 2017. (Riskin Decl. ¶ 3, Ex. B.) In addition to inquiring as to the status of Request #3, Petitioner
15 informed the BID of its duties under the Brown Act and offered to inspect the records in person
16 upon the BID's request. (*Id.*) The BID did not respond. (Riskin Decl. ¶ 4.) Petitioner sent a final
17 follow-up to the BID on February 17, 2018. (Riskin Decl. ¶ 3, Ex. B.) The BID did not respond
18 prior to Petitioner filing the Petition on March 16, 2018. (Riskin Decl. ¶ 4.) As indicated in the
19 Petition, records obtained from the Los Angeles City Clerk via a CPRA request indicate that
20 responsive records exist: on April 28, 2017, BID co-Executive Director Hutchinson sent an email to
21 the City Clerk's officer regarding the May 2, 2017, BID board meeting. (von Herrmann Decl. ¶ 3,
22 Ex. B.) Attached to that email were both an agenda for the meeting and a biography of an individual
23 being nominated to the board. (*Id.*) It is likely the biography was distributed. The agenda also
24 included an item titled "[r]eview and vote on amendments to the bylaws." (*Id.*) It is likely materials
25 were distributed regarding the bylaws amendments.

26 **B. Petitioner Initiates Litigation; the BID Fails to File Responsive Pleading.**

27 Petitioner filed the petition in this matter on March 20, 2018. Respondent was served
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1 process on April 6, 2018. The BID's deadline to file a responsive pleading was May 7, 2018. Code
2 Civ. Proc., § 412.20. The BID did not file responsive pleading. The BID's attorney appeared at the
3 July 10, 2018, trial setting conference. (RJN Ex. B.) There, the Court set a deadline of August 10,
4 2018, for the BID to file its Answer. (*Id.*) The BID failed to file an Answer by that date and has not
5 filed an Answer subsequent to that time.

6 **C. The Bid Produces a Portion of Responsive Documents in Response to Litigation.**

7 The BID, despite failing to file a responsive pleading, produced a portion of the responsive
8 records via emails sent by the BID's attorney on September 14, 2018, ("Batch 1") and November 5,
9 2018 ("Batch 2"). (Cisneros Decl. ¶¶ 2, 3.) The responsive records included several emails
10 responsive to Request 1.1, a contract responsive to Request 1.3, and three meeting agendas
11 responsive to Request 2.1. (Riskin Decl. ¶¶ 6, 7.) However, the production contained many non-
12 responsive records, which seemed to be included at random. (Cisneros Decl. ¶¶ 2, 3.) Further, no
13 records were provided in response to Requests 1.2, 2.2, or 3.1. (Cisneros Decl. ¶¶ 7, 8, 9.) As such,
14 it is clear from the production that the BID did not conduct an adequate search for records.
15 Petitioner made multiple attempts to persuade the BID to complete production—or to at least conduct
16 a search that would be adequate for settlement purposes. (Cisneros Decl. ¶¶ 5, 6, 10.) In response,
17 the BID has given no indication that it intends to conduct a further search for records. As such,
18 judicial action is required.

19 The BID produced Batch 1 on September 14, 2018. (Cisneros Decl. ¶ 2.) The production
20 contained no letter explaining which records were responsive to which request or clarifying whether
21 the BID withheld any records subject to exemption. (*Id.*) Rather, the production consisted of a
22 number of emails copy and pasted into a forwarded email thread (some of which were also attached
23 as .eml files) and a number of attached files. (*Id.*) The production contained responsive records
24 which had not been previously produced, including an email exchange between the BID and the
25 City of Los Angeles from December 2016 (responsive to Request #1, item 1) and agendas to three
26 BID board meetings (responsive to Request #2, item 2.) (Riskin Decl. ¶¶ 6, 7.)

27 In response to Batch 1, Petitioner, via his attorney, sent a letter on September 17, 2018,
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1 which outlined the deficiencies in production. (Cisneros Decl. ¶ 5, Ex. A.) The letter described the
2 searches required to satisfy the request, asked that the BID provide certain verifying information
3 regarding future searches, and asked that, when the BID produce additional records, it clearly
4 identify the request each record is responsive to. (*Id.*)

5 The BID produced Batch 2 on November 5, 2018. (Cisneros Decl. ¶ 5.) The BID did not
6 provide details on the additional searches nor did the BID identify which request each record was
7 responsive to. (*Id.*) As with Batch 1, the majority of records were not responsive to Petitioner's
8 request. (*Id.*) In fact, many records were duplicative of those produced in Batch 1. (*Id.*) The BID did
9 not produce any additional emails. (*Id.*) However, the BID did produce the contract responsive to
10 Request #1.3, which it had not previously produced. (Riskin Decl. ¶ 7.)

11 In response to Batch 2, Petitioner made several attempts to confer further with the BID
12 regarding settlement in the months of November and December of 2018, to no avail. (Cisneros
13 Decl. ¶ 6.). On January 14, 2019, Petitioner, via his attorney, sent the BID a letter discussing the
14 ongoing problems with production and offering terms of settlement which could be accepted within
15 two weeks. (Cisneros Decl. ¶ 10, Exhibit B.) On the day of the deadline, January 28, 2019, the BID
16 emailed that it would try to respond by the end of the week. (Cisneros Decl. ¶ 11.)

17 The BID did not respond by the end of that week and discovery was served via personal
18 service on February 8, 2019. The BID did not respond to discovery. The BID has ceased
19 communication regarding settlement. (Cisneros Decl. ¶ 11, 12.)

20 In summary, the BID failed to respond to Petitioner's CPRA requests for almost a year prior
21 to litigation, despite Petitioner sending multiple follow-ups. After litigation, the BID failed to file a
22 responsive pleading both initially, and after the Court set a new deadline at the trial setting
23 conference. In response to litigation, the BID produced some responsive records, but has failed to
24 complete production, failed to respond to discovery, and has ceased engaging in settlement
25 negotiation. There is no indication that, absent judicial relief, Respondent will produce the
26 additional records it withheld, or that it will comply with its duties under the CPRA moving
27 forward.

1 **III. LEGAL ARGUMENT**

2 Respondent failed its duty to provide responsive records and, by its failure, is frustrating
3 public transparency and accountability. Petitioner asks this court for a writ of mandate ordering
4 Respondent to conduct a full search and to provide all responsive records. Further, Petitioner
5 requests to be declared the prevailing party in this litigation entitled to an award of reasonable fees.

6 **A. Respondent Failed to Submit a Responsive Pleading and all Facts Petitioner Alleges**
7 **should be Deemed Uncontroverted and True.**

8 Respondent failed to file a responsive pleading and, thus, all facts Petitioner alleges should
9 be deemed uncontroverted and true. A respondent's failure to file a responsive pleading does not
10 give way to a granting of a Petitioner's peremptory writ by default. Cal. Code of Civ. Proc. § 1088
11 ("[t]he writ must be heard, whether the adverse party appears or not.") However, if no responsive
12 pleading is filed, the factual allegations in the writ petition may be deemed uncontroverted and true.
13 Cal. Code of Civ. Proc. § 1094 (If no return be made, the case may be heard on the papers of the
14 applicant.); *see also Bank of America, N.A. v. Superior Court* (2013) 212 Cal.App.4th 1076, 1084
15 ("In the absence of a return, all well-pleaded and verified allegations of the writ petition are
16 accepted as true."); *Titmas v. Superior Court* (2001) 87 Cal.App.4th 738, 741. Here, Respondent
17 failed to file a return, either 30 days after being served or by August 10, 2018, the deadline
18 prescribed by the Court at the trial setting conference. Thus, all of Petitioner's allegations should be
19 deemed uncontroverted and true.

20 **B. Litigation was Required because Respondent Unlawfully Withheld Records in**
21 **Response to Petitioner's CPRA Request.**

22 Respondent unlawfully withheld records and violated other duties under the CPRA when it
23 refused—for almost a year—to provide records in response to Petitioner's CPRA request. In so doing,
24 the BID has shrouded fundamental aspects of its operations in secrecy. Litigation was necessary.

25 **1. General Principles of the CPRA**

26 Pursuant to the CPRA, individuals have a right to access government records. § 6250, *et seq.*
27 In enacting the CPRA, the California Legislature declared that "access to information concerning
28

1 the conduct of the people's business is a fundamental and necessary right of every person in this
2 state." § 6250; *see also County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 63. To
3 facilitate the public's access to this information, the CPRA mandates, in part, that "each state or
4 local agency, upon a request for a copy of records that reasonably describes an identifiable record or
5 records, shall make the records promptly available." § 6253(b).

6 An agency is required to provide a requestor with its determination as to whether the request
7 seeks disclosable records within 10 days of receiving the request. § 6253(c). While the CPRA
8 provides permissive exemptions to its disclosure requirements, these exemptions must be narrowly
9 construed and the agency bears the burden of showing that a specific exemption applies.

10 *Sacramento County Employees' Retirement System v. Superior Court* (2013) 195 Cal.App.4th 440,
11 453. Where an agency withholds responsive records on the basis of a statutory exemption, "the
12 agency . . . must disclose that fact." *Haynie v. Superior Court* (2001) 26 Cal. 4th 1061, 1072 (citing
13 § 6255). Even if portions of a document are exempt from disclosure, the agency must disclose the
14 remainder of the document. § 6253(a).

15 The CPRA requires that an agency "assist the member of the public [to] make a focused and
16 effective request that reasonably describes an identifiable record of records" by taking steps to
17 "[a]ssist the member of the public to identify records and information that are responsive to the
18 request or the purpose of the request, if stated" and must "[p]rovide suggestions for overcoming any
19 practical basis for denying access." § 6253.1.

20 The BID is subject to the CPRA as a matter of state law. California Streets and Highway
21 Code § 36612. The BID's contract with the City of Los Angeles also mandates that the BID and its
22 Board Members comply with the CPRA. (RJN, Ex. A.)

23 If an agency fails to comply with these statutory provisions, the CPRA authorizes a
24 person to file a petition for writ of mandate to enforce their right to inspect or to receive a copy of
25 records. § 6258. If the Court finds that the failure to disclose is not justified, it shall order the
26 agency to make the record public. § 6259(b).

27 Public policy favors judicial enforcement of the CPRA. The CPRA contains a mandatory
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1 attorney's fee provision for the prevailing plaintiff. § 6259(d). The purpose of the provision is to
2 provide "protections and incentives for members of the public to seek judicial enforcement of their
3 right to inspect public records subject to disclosure." (emphasis added) *Filarsky v. Superior Court*
4 (2002) 28 Cal.4th 419, 427. A plaintiff prevails under the CPRA where the plaintiff shows that an
5 agency unlawfully denied access to records. *Community Youth Athletic Center v. City of National*
6 *City* (2013) 220 Cal.App.4th 1385, 1446-1447. An agency is not protected from liability merely
7 because the denial of access was due to the agency's internal logistical problems or general neglect
8 of its duties. *Id.*

9 2. Petitioner's Requests Sought Disclosable Records and the BID has a Duty to
10 Disclose.

11 Here, Petitioner's requests sought disclosable records, the BID violated its duties under the
12 CPRA, and the BID continues to unlawfully withhold certain responsive records.

13 Petitioner's requests sought records subject to mandatory disclosure under the CPRA. While
14 the burden is on the agency to justify any withholdings, it is clear the request sought disclosable
15 records, including BID-related emails located in the email accounts of BID Board Members.
16 Request 1.1 seeks emails between anyone at the Larchmont Village BID, "staff or board," and
17 anyone at the domains "lacity.org" or "lapd.online" from between January 1, 2016, and March 31,
18 2017. (Riskin Decl. Ex. A.) Emails by agency officials are subject to the CPRA, even if located in
19 private accounts and or devices. *City of San Jose v. Superior Court* (2017) 2.Cal.5th 608 (*City of*
20 *San Jose*). Further, Section 16.3 of BID's contract with the City of Los Angeles explicitly makes
21 both the corporation and the Board subject to the CPRA. ("...Corporation and the Board of
22 Directors are also subject to and must comply with the California Public Records Act...") (RJN Ex.
23 A.) Here, it is clear that Board Members and staff, such as Board President Tom Kneafsey, BID
24 accountant Erin Dolan, and BID Executive Director Heather Boylston used non-BID email accounts
25 to conduct BID business. (von Herrmann Decl. Exs. B, C.) Thus, Request 1 sought disclosable
26 public records from BID staff and Board, regardless of whether emails related to BID business
27 within the scope of the request are located in private accounts or BID accounts. Respondent has a
28 duty to provide all records responsive to Request 1.1.

1 Request 1.2 seeks minutes from three Board meetings. (Riskin Decl. Ex. A.) Request 1.3
2 sought the contract with any consultants who assisted with the BID's most recent renewal of its
3 contract with the City of Los Angeles. (*Id.*) Respondent has a duty to provide all records responsive
4 to Requests 1.2 and 1.3.

5 Request 2.1 sought all board meeting agendas from 2014 through "the present" (best
6 construed as the time the BID conducts the search for records.) (*Id.*) The BID is required to publish
7 those agendas prior to its Board Meetings. Cal. Gov. Code §54954(a). As the records are already
8 published to the public, they cannot be withheld subject to a CPRA request. See § 6254.5.
9 Respondent has a duty to provide the agendas sought in Request 2.1.

10 Request 2.2 sought all internal BID emails relating to the October 2016 board meeting or, if
11 those emails were very few, all emails related to operation of the BID in October. (Riskin Decl. Ex.
12 A.) As discussed above, emails related to public business are presumptively disclosable, whether
13 located in agency accounts/devices or private accounts/devices. *City of San Jose, supra*. Respondent
14 has a duty to provide all records responsive to Request 2.2

15 Request 3.1 sought all materials distributed at the BIDs May 2017 board meeting. (Riskin
16 Decl. Ex. A.) Information distributed at a meeting subject to the Brown Act is public and
17 disclosable. Cal. Gov. Code § 54957.5(a). Additionally, the agenda from the meeting, obtained via a
18 CPRA request to the Los Angeles City Clerk, indicates that material was distributed at the meeting,
19 specifically a biography of a new board member and revised bylaws to be evaluated. (von
20 Herrmann Decl. ¶ 3, Ex. B.) Respondent has a duty to provide all records responsive to Request 3.

21 3. The BID Failed its Duties Under the CPRA.

22 Petitioner's requests triggered various BID duties. The BID had a duty to respond within 10
23 days with a determination of disclosability. § 6253(c). It failed this duty. (Riskin Decl. ¶4.) The BID
24 had a duty to assist Petitioner in obtaining records. § 6253.1. It failed this duty. (Riskin Decl. ¶ 4.)
25 The BID had a duty to provide records "promptly." § 6253(b). The BID failed to produce records
26 for eleven months prior to litigation, despite Petitioner's multiple follow-up communications (Riskin
27 Decl. ¶ 5), produced only partial records a year and a half after Petitioner's request, (Cisneros Decl.

1 ¶¶ 2, 3), and continues to withhold certain records two years after Petitioner's request. (Cisneros
2 Decl. ¶¶ 7, 8, 9.) The BID failed to provide records promptly.

3 Critically, the BID failed its duty to provide records by withholding all requested records by
4 its pre-litigation non-response. The BID failed to produce even a single record in response to these
5 requests prior to Petitioner initiating litigation. (Riskin Decl. ¶ 5.) The BID's complete withholding
6 of all requested records pre-litigation is an act hostile to transparency and public accountability and
7 violates the CPRA. This litigation was necessary.

8 **C. Respondent's Post-Litigation Production is Incomplete and the Court should Order**
9 **Further Production.**

10 As shown above, the BID failed to provide any records prior to litigation. After litigation,
11 the BID produced records in two batches: Batch 1 on September 14, 2018, and Batch 2 on
12 November 5, 2018 . However, the production is incomplete, the majority of the included records
13 were not responsive to Petitioner's request, and it is clear the BID did not conduct tailored searches
14 for records. Petitioner has communicated to the BID that additional searches are required, but the
15 BID has ceased communications regarding further production. A writ of mandate is required to
16 order the BID to complete production.

17 The BID has not produced all records in response to Request 1.1 (emails between the BID
18 and City of Los Angeles/LAPD). In Batch 1, the BID produced one thread of emails, approximately
19 five emails total, between the BID and the Los Angeles City Clerk, all of which were sent and/or
20 received on December 5 and December 6, 2016. (Riskin Decl. ¶ 6.) The BID produced no other
21 emails from any BID Board or Staff member for the entire period of January 1, 2016 to March 31,
22 2017. The BID did not produce any of the responsive emails obtained from the Los Angeles City
23 Clerk. (Cisneros Decl. ¶ 7.) Not a single email to LAPD was produced. (Cisneros Decl. ¶ 9.) It is
24 clear the BID did not conduct an adequate search of the email accounts that BID Board and Staff
25 used for BID business during the responsive period. The BID must produce additional records in
26 response to Request 1.1.

27 The BID failed to produce even a single record in response to Request 1.2 (minutes from
28 three BID board meetings). (Cisneros Decl ¶ 8.) The BID is required to retain these. CA Corp. Code

1 § 1500. And evidence shows that a .pdf file with minutes from one of the meetings was sent to the
2 Los Angeles City Clerk. (Cisneros Decl. Ex. A.) Petitioner brought the existence of the .pdf to the
3 BIDs attention. (*Id.*) The BID failed to produce that .pdf or other requested minutes. The BID must
4 produce additional records in response to Request 1.2.

5 With respect to Request 1.3, the BID produced the contract with the consultant it used for its
6 most recent renewal in Batch 2, and, thus, it has satisfied Request 1.3.

7 The BID has not produced all records in response to Request 2.1 (board meeting agendas
8 from 2014 through the present). The BID, in Batch 1, produced agendas for only three meetings:
9 May 22, 2014; May 18, 2016; and May 24, 2018. (Riskin Decl ¶ 6.) However, while the BID
10 produced Board *minutes* from meetings on June 1, 2015, January 15, 2016, and May 2, 2017,
11 (despite these records being non-responsive to Petitioner's requests), the BID failed to provide the
12 Board *agendas* from those meetings. The BID also failed to produce agendas from any of its
13 October meetings from 2014 through the present. The BID must produce additional records in
14 response to Request 2.1.

15 The BID failed to provide even a single record in response to Request 2.2 (all internal BID
16 emails related to the October 2016 board meeting/all emails related to BID operations in October
17 2016). (Cisneros Decl. ¶ 8.) The BID must produce these records.

18 The BID failed to provide even a single record in response to Request 3.1 (materials
19 distributed at the May 2017 board meeting.) As discussed above, evidence shows that materials
20 were distributed. (*Id.*) The BID must produce these records.

21 In summary, while the BID produced a small handful of emails, a few meeting agendas, and
22 the consultant contract, there are many additional records which must be produced. Further, the
23 confused nature of Respondent's production indicates that the BID did not conduct a tailored search
24 for records and, rather, simply produced a number of BID files at random. After all, a reasonable,
25 competent search using the search criteria Petitioner provided—including date-range and recipients—
26 would not have produced so many non-responsive records. Petitioner therefore seeks the Court's
27 order directing the BID to 1) conduct a new search for records, including any email account used by
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1 Board or Staff to conduct BID business within the responsive time periods; and 2) to provide
2 Petitioner with all responsive records.

3 **D. Petitioner is Entitled to a Mandatory Award of Attorney's Fees.**

4 The CPRA mandates that the Court shall award costs and reasonable attorney's fees to a
5 requestor who prevails in litigation. § 6259(d). The purpose of that provision is to provide
6 “protections and incentives for members of the public to seek judicial enforcement of their right to
7 inspect public records subject to disclosure.” (emphasis added) *Filarsky v. Superior Court* (2002) 28
8 Cal.4th 419, 427. A plaintiff prevails under the CPRA where the plaintiff shows that an agency
9 unlawfully denied access to records. *Community Youth Athletic Center v. City of National City*
10 (2013) 220 Cal.App.4th 1385, 1446-1447. A plaintiff also prevails where the litigation causes
11 production of records the agency previously failed to produce. *Sukumar v. City of San Diego* (2017)
12 14 Cal.App.5th 451, 464. Even partial relief entitles a plaintiff to a fee award, unless the results are
13 "so minimal or insignificant as to justify a finding that the plaintiff did not [in fact] prevail." *Id.*
14 (internal citations omitted.) Thus, if Petitioner can show that either the BID initially denied access
15 to records, and/or that it subsequently produced partial records in response to this litigation,
16 Petitioner has prevailed and is entitled to a fee award

17 That is precisely what occurred. Here, the BID failed to produce even a single record for
18 between ten and eleven months in response to Petitioner's three requests, denying all access to
19 records. Respondent ignored Petitioner's multiple follow-up communications. The BID's conduct
20 shows it did not intend to produce records. After litigation, the BID produced a number of records
21 pursuant to settlement negotiates. This production occurred approximately a year and a half after
22 Petitioner's request and was motivated by the lawsuit. Thus, while additional production must occur,
23 Petitioner has already prevailed. As such, along with an order compelling a new search and/or
24 disclosure, Petitioner requests the Court declare Petitioner to be the prevailing party entitled to
25 attorney's fees, with the exact amount set after submission of evidence with a motion for attorney's
26 fees.

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IV. CONCLUSION

The public's right to know, expressed in statute, Constitution, case law, and voter initiative, is well established in California. Here, the BID has shirked its responsibilities under the CPRA by keeping requested records secret for almost two years. The BID failed to produce even a single record in response to these requests prior to litigation. The BID showed its disregard for the CPRA by failing to appear in this litigation. The BID failed to conduct a reasonable search for records in response to this litigation. The BID has ceased communications regarding settlement or further production. The BID's hostility to transparency violates the law and denies the public an opportunity to examine the BID's conduct or hold the BID accountable. This Court should order the BID to conduct a new search for records, to produce all responsive records it locates, and the Court should name Petitioner the prevailing party entitled to an award of attorney's fees.

DATED: March 14, 2019



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